

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

---

UNITED STATES OF AMERICA,  
Plaintiff

4:21-cr-40106

4:22-cr-40018

vs.

JOSEPH KENNETH HENRY,  
Defendant

ORDER FOR  
HOSPITALIZATION  
PURSUANT TO  
18 U.S.C. § 4241(d)

---

The Defendant moved for a competency examination, which the Government did not oppose and the Magistrate Judge ordered. (4:21-cr-40106, Doc. 57, 60). Because the Defendant would not participate in an examination by Doctor Scott Pribyl, the defense moved without objection for an evaluation of Defendant at a Bureau of Prisons facility, (Doc. 61, 63), which the Magistrate granted. (Doc. 65). Subsequently, a report by Doctor Ryan Nybo of the Federal Detention Center, SEATAC, Washington, was filed with the Court. (Doc. 72). The Court held a competency hearing on April 11, 2023, at which it received several exhibits in reference to Defendant's criminal history and other relevant behavior. (Doc. 75). Because Defendant refused to participate in the hearing, the Court heard testimony

from Deputy United States Marshal Jeffrey Rasmussen, who described his unsuccessful efforts to bring the Defendant to court on the morning of the hearing.

The Court has considered the report from the Federal Detention Center at SEATAC, Washington, the additional documentation submitted with respect to Defendant's competency, the testimony of Deputy Marshal Rasmussen, and the arguments and additional information supplied by counsel for the Defendant and Government. Accordingly,

IT IS ORDERED:

1. that, pursuant to 18 U.S.C. § 4241(d), the Court finds by a preponderance of the evidence that the Defendant, Joseph Kenneth Henry, is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense;
2. that pursuant to 18 U.S.C. § 4241(d):
  - A. the Defendant will be committed to the custody of the Attorney General;
  - B. the Attorney General shall hospitalize the Defendant for treatment in a suitable facility—
    - (1) for such a reasonable period of time, not to exceed four (4) months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed; and
    - (2) for an additional reasonable period of time until-
      - (A) his mental condition is so improved that the trial may proceed, if the Court finds that there is a

substantial probability that within such additional period of time he will attain the capacity to permit the trial to proceed; or

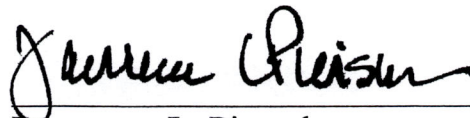
- (B) the pending charges against him are disposed of according to law;

whichever is earlier.

- C. If, at the end of the time period specified, it is determined that the Defendant's mental condition has not so improved as to permit the trial to proceed, the Defendant will be subject to the provisions of 18 U.S.C. § 4246;
3. that, pursuant to 18 U.S.C. § 4241(e), if the director of the facility in which the Defendant is hospitalized determines that the Defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the director shall promptly file a certificate with the Clerk of this Court. The Court will then hold a hearing pursuant to the provisions of 18 U.S.C. § 4247(d) to determine the Defendant's competency; and
4. that the United States Marshal's Service will transport the Defendant to the Facility designated by the Attorney General, pursuant to 18 U.S.C. § 4241(d) and will return the Defendant as further ordered by the Court.

Dated this 17<sup>th</sup> day of April, 2023.

BY THE COURT:



Lawrence L. Piersol

United States District Judge

ATTEST:

MATTHEW W. THELEN, CLERK

